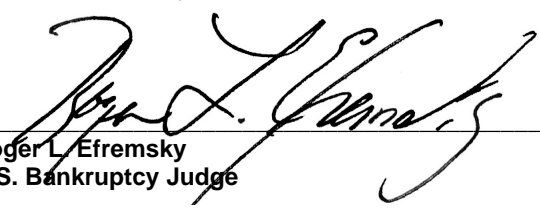




The following constitutes the  
Memorandum Decision of the Court.  
Signed December 7, 2011

  
\_\_\_\_\_  
Roger L. Efremsky  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re  
FLORA NG,  
  
Debtor.  
\_\_\_\_\_  
  
FLORA NG,  
  
Plaintiff,  
  
vs.  
STERLING PACIFIC LENDING,  
INC., et al.,  
  
Defendants.  
\_\_\_\_\_

Case No. 10-61392 RLE  
Chapter 7  
  
Adversary No. 11-4176  
Formerly Adversary No. 10-5378

**MEMORANDUM DECISION REGARDING MOTION TO DISMISS CERTAIN CAUSES  
OF ACTION IN SECOND AMENDED COMPLAINT**

This matter is before the court on the motion to dismiss filed  
by the above-captioned defendants. The matter has been fully briefed

1 and is appropriate for decision without oral argument.

2 Flora Ng's ("Ng") second amended complaint alleges that  
3 defendants' February 2008 foreclosure sales on four pieces of  
4 commercial real property were void and that defendants failed to  
5 rescind the sales until August 2008. From this predicate, Ng's second  
6 amended complaint states twelve causes of action under various  
7 theories and defendants now seek dismissal of certain of these causes  
8 of action.

9 For the reasons explained below, the court does not dismiss any  
10 of the causes of action and instead remands this entire adversary  
11 proceeding to the Superior Court in Santa Cruz County where it began  
12 in March 2008.

13  
14 **I. Background**

15 **A. Flora Ng's First Case: Ch. 11 Case No. 05-59533<sup>1</sup>**

16 1. On December 1, 2005, Ng filed chapter 11 case no. 05-59533 in  
17 the San Jose division of this court (the "2005 Case"). Ng stated this  
18 case was filed on an emergency basis to stop foreclosure sales on two  
19 pieces of real property in San Francisco, California. See docket no.  
20 12, Motion to Approve Post-Petition Financing, p. 1.

21 2. On December 15, 2005, Ng filed a motion to approve post-  
22 petition financing on a secured basis as to four pieces of real  
23 property (referred to as "Hyde, Marina, Lombard, and Hecker Pass" or  
24 the "Four Properties").<sup>2</sup> Ng claimed she could easily afford the

25  
26 <sup>1</sup>References to docket numbers in each section are to the docket  
27 in the main case and adversary proceedings identified in that section  
unless otherwise noted.

28 <sup>2</sup> Ng identified several other pieces of real property in the 2005  
case which have never been listed on the schedules in any of her  
subsequent cases, to the extent schedules were filed in those cases.

1 financial obligations of the proposed new loans and attached documents  
2 claimed to support the values of, and the alleged rental income from,  
3 the Four Properties. See docket no. 12, Motion to Approve Borrowing  
4 and supporting exhibits.

5 3. Pursuant to the December 20, 2005 Order Authorizing Post-  
6 Petition Financing of Real Property, defendants Sterling Pacific  
7 Lending, Inc. and its affiliate Generation Leasing, LLC, loaned  
8 approximately \$4.5 million to Ng secured by deeds of trust on the  
9 Hyde, Marina, Lombard, and Hecker Pass properties (Sterling Pacific  
10 Lending, Inc. and its related entities, collectively, "Sterling"). See  
11 docket no. 25, Order Authorizing Post-Petition Financing of Real  
12 Property.

13 4. On January 11, 2006, based on Ng's representation that there  
14 were no unsecured creditors, the court granted Ng's request to dismiss  
15 the 2005 Case. See docket no. 40, Order Dismissing Chapter 11 Case.

16 **B. Events between January 2006 and February 2008**

17 5. In 2007, Ng defaulted under the Sterling loan documents and  
18 Sterling began the process of foreclosing on the Four Properties. See  
19 docket no. 68, p. 3, Dec. Joshua Fischer in the Saldana Case described  
20 below.

21 6. According to Ng, in September 2007, Ng entered into an  
22 arrangement with an individual named Armando Saldana pursuant to which  
23 he was to provide Ng with "assistance in saving my properties." See  
24 docket no. 79, p. 2, Dec. Ng in the Saldana Case described below. In  
25 connection with this arrangement, Ng then agreed to transfer a 1%  
26 interest in each of the Four Properties to Armando Saldana as  
27 explained below.  
28

1           **C. Armando Saldana's Case: Ch. 13 Case No. 08-50672**

2           7. On February 15, 2008, Armando Saldana filed chapter 13 case  
3 no. 08-50672 in the San Jose division of this court (the "Saldana  
4 Case"). On his schedule A, Saldana listed a 1% ownership interest in  
5 each of the Four Properties. See docket no. 17, p. 10-12, Schedule A.

6           8. Grant deeds transferring these 1% interests from Ng to Saldana  
7 were executed by Ng on February 15, 2008. See docket no. 67, Dec.  
8 Debra Berg.<sup>3</sup> They were apparently never recorded. Saldana contacted  
9 Sterling on the morning of its scheduled foreclosure sales to tell  
10 Sterling he had filed his bankruptcy case and Sterling should not  
11 proceed with its foreclosure sales.

12           9. On February 19, 2008, Sterling conducted non-judicial  
13 foreclosure sales on the Four Properties and Sterling affiliate  
14 Yosemite Management Group acquired title by trustee's deeds upon sale  
15 recorded in the appropriate county recorders' offices. See docket no.  
16 68, p. 3-4, Dec. Joshua Fischer.<sup>4</sup>

17           10. On March 4, 2008, Ng filed a complaint for damages, to set  
18 aside trustee's sales, for declaratory relief and other causes of  
19 action against Sterling in the Santa Cruz County Superior Court,  
20 designated as case no. cv-159630 (the "Santa Cruz Action").  
21

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22           <sup>3</sup>The grant deeds are dated February 15, 2008. It is unclear why  
23 the parties waited until February 15, 2008 to execute the grant deeds  
24 when their deal was made in September 2007. Sterling suggests it was  
25 solely to interfere with its foreclosure rights. Saldana admits he  
26 knew of the February 19 sale dates. Ng admits she was contemplating  
27 filing her own bankruptcy case at this point, and admits she was  
relying on the fact that Saldana's filing would create a stay which  
would benefit her in her negotiations with Sterling. See AP 08-5088,  
docket no. 2-1, Ng's Opposition to TRO in Santa Cruz Action and  
Saldana Declaration filed with it.

28           <sup>4</sup>Sterling contends it was negotiating with Ng on February 19,  
2008 and she did not disclose that she had transferred 1% interests  
to Saldana or that he had filed bankruptcy on February 15, 2008.

1           11. On April 2, 2008, Ng filed an Amended Notice of Removal of  
2 State Court Action through which she removed the first four causes of  
3 action in the Santa Cruz Action to the San Jose division of this court  
4 pursuant to 28 U.S.C. §1452 where it was designated as adversary  
5 proceeding no. 08-5088 in the Saldana Case. See docket no. 2, Amended  
6 Notice of Removal.

7           12. On May 28, 2008, Sterling filed a motion for relief from stay  
8 pursuant to Bankruptcy Code §362(d)(1) and §362(d)(4). See docket nos.  
9 53-57, 60-75, 86-88. Sterling requested an order validating the  
10 February 19 foreclosure sales through retroactive annulment of the  
11 automatic stay. Saldana filed opposition to the motion. Ng also filed  
12 opposition but the court ruled she had no standing to oppose the  
13 motion. See docket nos. 77-80 and 82-83. Following a hearing on June  
14 25, 2008, the court granted relief from stay on a prospective basis  
15 only. See docket no. 107, July 15, 2008 Order Granting Relief from  
16 Stay.

17           13. In early August 2008, Sterling set aside the trustee's deeds  
18 recorded after the February 19, 2008 foreclosure sales and re-noticed  
19 its foreclosure sales for August 27, 2008. See docket no. 57 in AP 11-  
20 4176, the SAC, paragraph 53-54.

21           14. On September 25, 2008, the court dismissed the Saldana Case.  
22 See docket no. 124.

23           **D. Flora Ng's Second Case: Ch. 11 Case No. 08-54744**

24           15. Apparently to stop the foreclosure sales set for August 27,  
25 on August 26, 2008, Ng filed chapter 11 case no. 08-54744 in the San  
26 Jose division of this court.

27           16. On September 11, 2008, Sterling filed a notice of removal as  
28 to the Santa Cruz Action to the San Jose division of this court where

1 it was designated as adversary proceeding no. 08-5268 in what was then  
2 Ng's chapter 11 case. The operative pleading at that point was Ng's  
3 First Amended Complaint filed August 18, 2008 ("FAC"). See docket no.  
4 1, ex. D, First Amended Complaint.<sup>5</sup>

5 17. On September 12, 2008, Sterling filed a motion for relief  
6 from stay under Bankruptcy Code §362(d)(1) and §362(d)(4) as to all  
7 Four Properties. See docket nos. 19-20. Ng filed opposition.<sup>6</sup> See  
8 docket nos. 26-30, 64-65. The preliminary hearing was continued from  
9 October 1, 2008 to November 19, 2008 and again continued to December  
10 3, 2008 and again continued to December 10, 2008. The motions were  
11 ultimately set for trial to be held on January 23, and January 30,  
12 2009. See docket nos. 70-73.

13 18. On October 29, 2008, the court converted Ng's ch. 11 case to  
14 one under ch. 7 for, among other reasons, her failure to comply with  
15 the terms of the court's order to show cause issued on September 17,  
16 2008. See docket nos. 22 and 42.

17 19. On January 14, 2009, the chapter 7 trustee of Ng's estate  
18 filed a notice of settlement with Ng and Sterling regarding the relief  
19 from stay motions as to the Four Properties. See docket nos. 84, 87-90  
20 and docket nos. 98-101, 107-108. The stipulations allowed the stay to  
21

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22  
23 <sup>5</sup> The causes of action in the FAC were: 1. Damages caused by  
24 unlawful foreclosure; 2. Declaratory relief re unlawful foreclosure;  
25 3. Usury; 4. Money had and received; 5. Injunctive relief; 6. Unfair  
26 competition; 7. Forcible entry; 8. Conversion; 9. Common counts; 10.  
27 Conversion; 11. Forcible entry; 12. Conversion; 13. Common counts; 14.  
28 Intentional interference with economic relations; 15. Negligent  
interference with economic relations. See docket no. 1-9, exhibit D -  
FAC.

<sup>6</sup> Ng's opposition to this motion says, with a one-day exception  
as to the Hecker Pass property, she remained in possession of the Four  
Properties after the February 19, 2008 foreclosure sales. See docket  
no. 26, p. 4.

1 remain in effect for a certain period of time after which Sterling was  
2 permitted to foreclose on all Four Properties.<sup>7</sup>

3 20. On March 17, 2010, the court granted Ng's motion to dismiss  
4 the chapter 7 case. See docket no. 152. (Dismissal was conditioned on  
5 payment of all unsecured creditors and administrative expenses.)

6 **E. Disposition of Adversary Proceeding Nos. 08-5088 and 08-5268**

7 21. On February 26, 2009, the court dismissed adversary  
8 proceeding no. 08-5088 (pending in the Saldana Case) based on Ng's  
9 failure to appear at a status conference. At the request of the  
10 chapter 7 trustee in case no. 08-54744, in June 2009, the court  
11 vacated the dismissal and reopened the adversary proceeding.

12 22. At Ng's request, by order entered on May 3, 2010, the court  
13 remanded adversary proceeding no. 08-5088 to the Santa Cruz County  
14 Superior Court. See docket no. 31.

15 23. On February 26, 2009, the court also dismissed adversary  
16 proceeding no. 08-5268 (pending in the Ng case) for lack of  
17 prosecution. See docket no. 19. At the request of the chapter 7  
18 trustee, in June 2009, the court vacated the dismissal and reopened  
19 the adversary proceeding. See docket nos. 25, 28.

20 24. At Ng's request, by order entered on May 3, 2010, the court  
21 remanded adversary proceeding no. 08-5268 to the Santa Cruz County  
22 Superior Court. See docket no. 34.

23 25. On June 26, 2009, the chapter 7 trustee filed a notice of  
24 intent to abandon the estate's interest in adversary proceeding nos.  
25 08-5088 and 08-5268 and any claims regarding the foreclosures on the  
26 Marina, Lombard and Hyde Properties but no order was ever entered on  
27

---

28 <sup>7</sup> Sterling foreclosed on three of the Four Properties by April  
2009 and on the fourth by February 2010.

1 this. See docket no. 126, Trustee's Notice of Intent to Abandon Real  
2 Property and Certain Related Litigation Claims in no. 08-54744.

3 **F. Flora Ng's Third Case: Ch. 7 Case No. 10-61392**

4 26. On November 1, 2010, Ng filed chapter 7 case no. 10-61392 in  
5 the San Jose division of this court.

6 27. On November 4, 2010, Sterling once again filed a notice of  
7 removal of the Santa Cruz Action to the San Jose division of this  
8 court where it was designated as adversary proceeding no. 10-5378. See  
9 docket no. 1, ex. D, the FAC. In support of its notice of removal,  
10 Sterling asserted that issues raised in the Santa Cruz Action arose  
11 out of the bankruptcy court's orders on the stipulations granting  
12 relief from stay in Ng's second case. See docket no. 1, p. 5.

13 28. On February 2, 2011, the court dismissed this chapter 7 case  
14 because Ng failed to comply with the court's scheduling order for  
15 filing missing documents. See docket no. 21.<sup>8</sup>

16 29. On February 16, 2011, Sterling filed a motion to dismiss  
17 certain claims in the FAC. See docket nos. 10-14.

18 30. Following a case management conference held on March 4, 2011,  
19 effective June 3, 2011, the San Jose division of this court  
20 transferred adversary proceeding no. 10-5378 to the Oakland division  
21 and it was re-designated as adversary proceeding no. 11-4176. See  
22 docket no. 26.

23 31. On June 28, 2011, Sterling re-filed its motion to dismiss  
24 certain causes of action in the FAC. See docket nos. 37-42. Ng  
25 filed opposition. See docket nos. 43-46.

---

27 <sup>8</sup>On March 11, 2011, Ng filed a fourth case - chapter 7 case no.  
28 11-52289 in the San Jose division of this court. This case was  
dismissed on June 6, 2011 for Ng's failure to submit a copy of her  
federal tax return. See docket no. 26 in that case.



1           32. Following a hearing on July 28, 2011, the court dismissed  
2 the fifth cause of action (injunctive relief) without leave to  
3 amend and dismissed the first, second, sixth, fourteenth and  
4 fifteenth causes of action with leave to amend. See docket no. 53.

5           33. On September 6, 2011, Ng filed a second amended complaint  
6 (the "SAC"). See docket no. 57.<sup>9</sup> The SAC alleges, in essence,  
7 that due to Sterling's failure to rescind the unlawful foreclosure  
8 sales for approximately six months, Ng lost the opportunity to  
9 refinance her defaulted loans, lost income from the Lombard and  
10 Hecker Pass Properties and lost the existing equity in the Four  
11 Properties. She asks for compensatory damages of \$7 million,  
12 emotional distress damages of \$1 million and exemplary damages.

13  
14 **II. Sterling' Motion to Dismiss the Second Amended Complaint**

15           34. On September 26, 2011, Sterling filed a motion to dismiss  
16 as to the first, second, third, eleventh and twelfth causes of  
17 action of the SAC based on Fed. R. Civ. P. 12(b)(6) and 12(b)(7)  
18 applicable here by Fed. R. Bankr. P. 7012(b)(6) and 7012(b)(7).  
19 See docket no. 62-71.

20           35. Sterling argues that the first cause of action (damages  
21 for unlawful foreclosure) again fails to state a claim for relief  
22 because, as a matter of Ninth Circuit law, Ng does not have  
23 standing to recover damages for Sterling's foreclosure sales  
24

25  
26  
27 <sup>9</sup>The relevant causes of action stated in the SAC are: 1. Damages  
28 caused by unlawful foreclosure; 2. Usury; 3. Unfair competition; 11.  
Intentional interference with economic relations; 12. Negligent  
interference with economic relations. The other causes of action deal  
with forcible entry, conversion, and common counts. See docket no. 57.

1 conducted in violation of the automatic stay in the Saldana Case.<sup>10</sup>  
2 Sterling also argues that the third, eleventh and twelfth causes of  
3 action must be dismissed for the same reasons - each is premised on  
4 a stay violation about which Ng lacks standing to complain. (The  
5 third cause of action is not premised on a stay violation - it is  
6 based on the allegation that Sterling charged usurious interest  
7 because it was not properly licensed and engaged in predatory  
8 lending in making the 2005 loans to Ng; it is based on California's  
9 unfair competition law. The second cause of action for usury is  
10 also attacked by Sterling. This court does not rule on this issue  
11 for the reasons discussed below.)

12 36. The eleventh and twelfth causes of action allege that "at  
13 all times" Washington Mutual and Aurora Home Loans - lenders with  
14 the first priority deeds of trust on the Marina and Hyde properties  
15 - were willing to enter into forbearance agreements with Ng and  
16 individuals named Simon Wong and Allen Wong were willing to loan Ng  
17 money to cure the existing defaults on the Four Properties but by  
18 "unlawfully foreclosing" and "failing to reconvey" for six months,  
19 Sterling prevented these transactions.

20 37. In opposition, Ng reiterates her argument that she was a  
21 creditor (or a potential creditor) in the Saldana Case. She also  
22 argues that the allegations in the SAC are that the foreclosures in  
23 2008 were "unfair" under California law. However, she also persists  
24 in her argument that she is an "individual" and so may seek damages  
25 under Bankruptcy Code §362(k).  
26

27  
28 <sup>10</sup> Sterling also argues the first cause of action should be  
dismissed under Fed. R. Civ. P. 12(b)(7) because indispensable parties  
have not been joined. Any joinder issues may be resolved elsewhere.

### III. Discussion

#### A. Standard for Motion to Dismiss

Fed. R. Civ. P. 12(b)(6), applicable here by Fed. R. Bankr. P. 7012(b)(6), provides that a defendant may move to dismiss for failure to state a claim upon which relief may be granted. A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim; in order to survive a motion to dismiss, a plaintiff must allege enough facts to state a claim for relief that is "plausible on its face." Bell Atlantic v. Twombly, 550 U.S. 544, 570 (2007).

Sterling does not move to dismiss under Fed. R. Civ. P. 12(b)(1) (lack of subject matter jurisdiction). Instead, Sterling contends that Ng lacks standing to bring the causes of action that depend on violation of the Saldana stay as the underlying flaw in the February 2008 foreclosure sales. If Ng lacks standing to bring any of her causes of action, the court does not have subject matter jurisdiction and dismissal is appropriate. Warren v. Fox Family Worldwide, Inc., 328 F. 3d 1136 (9<sup>th</sup> Cir. 2003).

Fed. R. Civ. P. 12(h)(3) provides that if the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action. As a consequence, it is appropriate to address the question of standing in deciding this motion to dismiss. Ng needs to show that the facts alleged, if proved, would confer standing upon her to seek damages for a violation of the automatic stay. According to Sterling, this is an impossibility under controlling Ninth Circuit law as to the first, third, eleventh and twelfth causes of action.

#### B. Ng Lacks Standing for Damages for Automatic Stay Violation

The original complaint filed in March 2008, alleged that the

1 stay violation was a "criminal contempt of court." See AP no. 08-  
2 5088, docket no. 1-1, ¶32, ¶37, ¶39, ¶40. The FAC filed in August  
3 2008 was revised to reflect that Sterling had by then rescinded the  
4 void deeds but used this same language, describing defendants  
5 actions as a violation of the criminal law entitling Ng to punitive  
6 damages and as a contempt of court. See AP no. 08-5268, docket no.  
7 9, ¶41, ¶43. The SAC repeats this "contempt" language and describes  
8 the February 2008 foreclosure sales as "void." It now alleges that  
9 the stay violation was a "criminal contempt of court, a violation  
10 of federal bankruptcy law, unfair business practices ... and a  
11 material irregularity and unfairness under California law  
12 applicable to ... private foreclosure procedures." See AP no. 11-  
13 4176, docket no. 57, ¶43, ¶47, ¶48.

14 Despite the court's prior rulings on this issue, Ng persists  
15 in framing her allegations as a stay violation. Paragraphs 49-55 of  
16 the SAC allege that removal of the Four Properties from the Saldana  
17 estate damaged her, that her interest in the Four Properties was  
18 protected by the automatic stay and she is proceeding under "both  
19 or either federal and state law."

20 Bankruptcy Code §362(k) provides in relevant part: "an  
21 individual injured by any willful violation of a stay provided by  
22 this section shall recover actual damages, including costs and  
23 attorneys' fees, and, in appropriate circumstances, may recover  
24 punitive damages."

25 As the court has previously ruled, Ng does not have standing  
26 to seek damages for Sterling's violation of the automatic stay in  
27 the Saldana Case whether she was a creditor in that case or not.  
28 Nor does she have standing as a co-owner of the Four Properties.

1 The Ninth Circuit has limited standing to assert claims for  
2 violation of the stay to individuals Congress designated as  
3 beneficiaries of the stay. In re Brooks, 871 F.2d 89, 90 (9<sup>th</sup> Cir.  
4 1989). Third party co-owners of property at issue in a bankruptcy  
5 case lack standing to assert a violation of the automatic stay  
6 under Bankruptcy Code §362. In re Globe Investment and Loan Co.,  
7 867 F.2d 556, 559-60 (9<sup>th</sup> Cir. 1989) (holding that co-owners of  
8 property did not have standing to pursue violation of automatic  
9 stay pursuant to Bankruptcy Code §362). See also, In re Brooks, 79  
10 B.R. 479 (9<sup>th</sup> Cir. B.A.P. 1987) (if debtor or trustee does not  
11 invoke protections of Bankruptcy Code §362, no other party may  
12 attack acts in violation of stay); Sanchez v. Torres, 2008 WL  
13 1701900, at \*6 (N.D. Cal. April 10, 2008) (owners other than the  
14 debtor do not have standing to assert violation of automatic stay);  
15 Burcena v. Bank One, 2007 WL 291562, at \*5 (D. Hi. Oct. 1, 2007)  
16 (same); Yanik v. Countrywide Home Loans, Inc., 2011 WL 223739, at  
17 \*3 (C.D. Cal. Jan. 21, 2011) (same).

18 Based on this consistent, binding authority, Ng does not have  
19 standing to seek damages for a stay violation that occurred in the  
20 context of the Saldana Case. Ng has no cause of action for damages  
21 based on that stay violation whether the SAC makes reference to  
22 Bankruptcy Code §362(k) or some vague zone of protection created by  
23 the existence of an automatic stay in another bankruptcy case.

24 **C. The Adversary Proceeding Does Not State Claims That**  
25 **Arise under Title 11 or Arise in a Case under Title 11**

26 A foreclosure sale conducted in violation of the automatic  
27 stay is void. In re Schwartz, 954 F.2d 569 (9<sup>th</sup> Cir. 1992). The  
28 first, eleventh and twelfth causes of action appear to seek damages  
stemming from the alleged failure to immediately rescind the sales

1 when it was apparent they were void under Schwartz.

2 This is too weak a link to establish federal jurisdiction. The  
3 defect in the foreclosure sales may be based on the Bankruptcy Code  
4 - they were void under Schwartz - but the challenged causes of  
5 action are based on California law. Ng may not assert these state  
6 law causes of action in this court.

7 Bankruptcy jurisdiction is governed by 28 U.S.C. §1334.<sup>11</sup>  
8 Bankruptcy judges may hear and determine all cases under title 11  
9 and all core proceedings arising under title 11, or arising in a  
10 case under title 11, that are referred to it by the district court.  
11 28 U.S.C. §157(b)(1); B.L.R. 5011-1.

12 Section 157(b)(2) provides a non-exhaustive list of core  
13 proceedings. Each of the notices of removal claimed that this  
14 litigation was core. For example, see docket no. 1 in 08-5268 in  
15 which Sterling states the adversary proceeding is core pursuant to  
16 §157(b)(2)(A),(C),(G),(K), and if it was held to be non-core  
17 Sterling consented to proceeding in the bankruptcy court. Ng's  
18 removal notices were similar.

19 Core proceedings are those that would not exist outside of  
20 bankruptcy. In re Pegasus Gold Corp., 394 F.3d 1189 (9<sup>th</sup> Cir. 2005).  
21 Core proceedings depend on the Bankruptcy Code for their existence  
22 and could not proceed in another court. Dunmore v. United States,  
23 358 F.3d 1107, 1114 (9<sup>th</sup> Cir. 2004). Proceedings are non-core if  
24

---

25  
26 <sup>11</sup> 28 U.S.C. §1334 (a) provides "Except as provided in subsection  
27 (b) of this section, the district courts [and the bankruptcy courts  
28 as a unit thereof under §157] shall have original and exclusive  
jurisdiction of all cases under title 11. (b) ... the district courts  
shall have original but not exclusive jurisdiction of all civil  
proceedings arising under title 11, or arising in or related to cases  
under title 11."

1 they do not invoke a substantive right provided by the Bankruptcy  
2 Code and do not involve theories that could only arise in a  
3 bankruptcy case. Gruntz v. County of L.A., 202 F.3d 1074, 1081 (9<sup>th</sup>  
4 Cir. 2000).

5 Based on these articulations of whether a matter is core or  
6 not, it is obvious that this adversary proceeding is not a core  
7 proceeding. Beyond the allegation that the foreclosure sales in  
8 February 2008 were void because they were done in violation of the  
9 automatic stay in the Saldana Case, the challenged causes of action  
10 are premised on California law and do not arise under title 11;  
11 resolution of these causes of action does not depend on the  
12 Bankruptcy Code and the litigation has obviously proceeded in  
13 another court and will be able to do so on remand. Finally, none of  
14 the theories alleged in the SAC could only arise in a bankruptcy  
15 case. And the court reiterates that Ng does not have standing to  
16 seek damages for violation of the automatic stay in the Saldana  
17 Case, whether based on the theory that she is an individual seeking  
18 damages under Bankruptcy Code §362(k) or based on the theory that  
19 Ng is or was a creditor of Saldana or a co-owner of property with  
20 Saldana.

21 At one point, it may have appeared - based on Sterling's  
22 suggestion - that certain causes of action in this adversary  
23 proceeding may have required this court to interpret the relief  
24 from stay order entered in the Saldana Case in July 2008 or the  
25 relief from stay orders entered in Ng's second case in January  
26  
27  
28

2009.<sup>12</sup> The court would have had jurisdiction to do that. In re Taylor, 884 F.2d 478, 481 (9<sup>th</sup> Cir. 1989) (court retained jurisdiction to interpret its orders entered prior to dismissal but not to grant new relief); In re Davis, 177 B.R. 907, 912 (9<sup>th</sup> Cir. B.A.P. 1995) (court retains jurisdiction for action for damages for stay violation after dismissal); In re Aheong, 276 B.R. 233, 245 (9<sup>th</sup> Cir. B.A.P. 2002) (court had post-dismissal and post-closing jurisdiction to annul the stay). If that had been the case, this court may have had jurisdiction at least as to the causes of action premised on a stay violation as contempt of court.

This suggestion does not survive close scrutiny<sup>13</sup> and the current formulation of the causes of action in the SAC make it clear that no such basis for jurisdiction exists. Determination of the issues raised in the SAC will not involve interpretation of bankruptcy court orders or interpretation of the parameters of Bankruptcy Code §362.<sup>14</sup> Thus, nothing in the adversary proceeding comes within the scope of this court's arising in or arising under

---

<sup>12</sup>See the final paragraph of each Order on Stipulation for Relief from Automatic Stay as to the Four Properties entered in no. 08-54744 as docket nos. 98-101: "In the event that there are any disputes remaining or any disputes concerning the terms of the stipulation or this order, the parties agree to submit each such issue or issues to this court for resolution." A different paragraph of each stipulation also preserves the right to proceed elsewhere with the action designated as adversary proceeding no. 08-5268.

<sup>13</sup>It may in fact have been disingenuous for Sterling to assert that the court would be called upon to interpret the relief from stay orders entered in Ng's second case since the adversary proceeding was premised on a stay violation in the Saldana Case and the orders in Ng's second case were irrelevant to those claims.

<sup>14</sup>The court may also exercise its discretion to retain jurisdiction over an adversary proceeding after dismissal of a main case in the interest of economy, convenience, fairness, or comity. See In re Carraher, 971 F.2d 327, 328 (9<sup>th</sup> Cir. 1992). No such interests are apparent here.



jurisdiction.

**D. This Court Does Not Have Related to Jurisdiction**

Under 28 U.S.C. §157(c)(1), a bankruptcy court may hear a proceeding that is not core but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge submits proposed findings of fact and conclusions of law to the district court. If all parties consent, the district court may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine, subject to the right to appeal under 28 USC 158. 28 U.S.C. §157(c)(2). Here, the court does not have related to jurisdiction.

In In re Feitz, 852 F.2d 455 (9<sup>th</sup> Cir. 1988), the Ninth Circuit adopted the test stated in Pacor v. Higgins, 743 F.2d 984, 994 (3<sup>rd</sup> Cir. 1984) for determining whether there is related to jurisdiction. There is related to jurisdiction if the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy. The Ninth Circuit has narrowed this test when the action involves a post-confirmation chapter 11 debtor. In re Ray, 624 F.3d 1124, 1133-34 (9<sup>th</sup> Cir. 2010); In re Pegasus Gold Corp., 394 F.3d 1189, 1193-94 (9<sup>th</sup> Cir. 2005). In that context, there must be a "close nexus" between the action and the bankruptcy case.

While this case is not comparable to a post-confirmation chapter 11 case, it is clear that there is no close nexus between this adversary proceeding and any bankruptcy case. Ng's cases are all closed and the outcome of this dispute will not have any effect on any estate. The outcome of the dispute between Ng and Sterling will not alter any debtor's rights, liabilities, options, or

1 freedom of action or in any way impact upon the handling and  
2 administration of any bankruptcy estate. Accordingly, the court  
3 does not have related to jurisdiction.  
4

5 **IV. Conclusion**

6 Based on the foregoing, the court now remands this entire  
7 adversary proceeding to the Santa Cruz County Superior Court where  
8 it shall remain. The court will issue a separate order remanding  
9 this adversary proceeding and directing the clerks office to close  
10 it.  
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13 **\*\* End of Memorandum Decision \*\***  
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